

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

ROBERT LEE LEWIS,

Petitioner,

v.

CIVIL ACTION NO. 2:16-cv-03194

DAVID BALLARD, et al,

Respondents.

MEMORANDUM OPINION AND ORDER

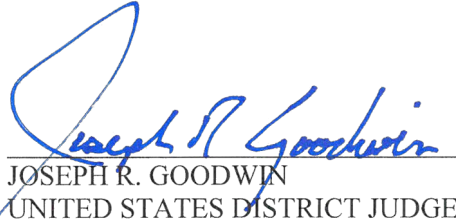
Pending before the court are the petitioner's Petition for Writ of Habeas Corpus [ECF No. 2], the respondents' Motion to Dismiss an Improperly-Named Party and Correct Case Caption [ECF No. 16], the respondents' Motion to Dismiss Petition for Failure to Exhaust State Remedies [ECF No. 18], and the petitioner's Motion for Leave to Hold the § 2254 Writ of Habeas Corpus in Abeyance [ECF No. 23]. This action was referred to United States Magistrate Judge Omar J. Aboulhosn for submission to this court of proposed findings of fact and recommendation for disposition pursuant to 28 U.S.C. § 636(b)(1)(B). Judge Aboulhosn submitted his Proposed Findings of Fact and Recommendation [ECF No. 29] regarding the three pending motions. The petitioner timely filed his Objections [ECF No. 30]. The respondent did not timely file objections.

Having reviewed the petitioner's objections de novo, the court **FINDS** that they are without merit. Accordingly, the court **ADOPTS** and **INCORPORATES** herein the Magistrate Judge's report as to his recommendation that the court grant the respondents' Motion to Dismiss and deny the petitioner's Motion for Abeyance. As the court is adopting the recommendation to grant the Motion to Dismiss, the court considers moot the respondents' Motion to Dismiss an Improperly-Named Person, and thus the court varies from the Magistrate Judge's recommendation to grant the motion regarding petitioner's naming of the Attorney General.

Accordingly, the court **ORDERS** that the respondents' Motion to Dismiss Petition for Failure to Exhaust State Remedies [ECF No. 18] is **GRANTED**, the petitioner's Motion for Leave to Hold the § 2254 Writ of Habeas Corpus in Abeyance [ECF No. 23] is **DENIED**, and the respondents' Motion to Dismiss an Improperly-Named Party and Correct Case Caption [ECF No. 16] is **DENIED as moot**. The court further **ORDERS** that the petitioner's Petition for Writ of Habeas Corpus [ECF No. 2] is **DISMISSED without prejudice**.

The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: March 8, 2017


JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE